

REMARKS:

Applicants note that this response uses the new revised format for amendments set forth at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>.

Specification

The Office Action noted use of the trademarks Velcro® and Lycra® in the application. In accordance with the comments in the Office Action, Applicants have amended the specification so that these terms are capitalized and accompanied by appropriate generic terminology.

Applicants also have amended the specification to replace the misspelled term “restaint” with its correct spelling, “restraint.” In addition, Applicants have amended the Abstract to be less than 150 words.

Claims Amendments

After entry of this response, claims 1 to 22 are pending. Claims 1, 4, 6, 10, 13 and 15 have been amended, and claims 19 to 22 have been added. Claims 1, 4, 10, 13, 19 and 21 are the independent claims. Reconsideration and further examination are respectfully requested.

Subject Matter Indicated as Allowable

The Office Action indicated that claims 4 and 13 would be allowable if rewritten in independent form including all of the limitations of their base claims and any intervening claims. Applicants have amended these claims into independent form. However, Applicants have not included the limitation of the intervening claims, namely that “the strap is at least one inch wide at a portion that fits across the tops of the breasts.”

In view of the comment in the Office Action that “[n]one of the cited references disclose the strap as being wider as claimed,” Applicants believe that amended claims 4 and 13 are still allowable even without the limitation from the intervening claims. Such an indication is respectfully requested.

Claim Objections

The Office Action objected to claims 6 and 15 for use of the trade name Velcro® (i.e., “velcro fastener”). Applicants have amended these claims to use the generic term suggested in the Office Action, “hook-and-loop fastener.” Accordingly, withdrawal of this objection is respectfully requested.

Rejected Claims

Claims 1 to 3, 5 to 12, and 14 to 18 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5, 098,331 (Corrado). Applicants have amended the independent ones of these claims, namely claims 1 and 10.

Claim 1: Amended claim 1 is reproduced below for the Examiner's convenience:

1. A restraint that reduces breast movement while a person exercises or performs some other activity, comprising:
 a strap that fits across tops of the person's breasts, under the person's arms, and around the person's back; and
 an adjustable fastener that is for fastening the strap together and that is disposed to be positioned at the person's back;
 wherein at least part of the strap is sufficiently elastic so as to ensure a close fit, but is also sufficiently inelastic so that the restraint avoids contributing to movement of the breasts during exercising or other activities.

The applied art, namely Corrado, is not seen by Applicants to disclose or to suggest the foregoing features of claim 1, at least with respect to "an adjustable fastener ... that is disposed to be positioned at the person's back."

As an aside, Applicants note that in actual use, the fastener can be closed in front of the person, and then the strap can be manipulated to shift the fastener to the person's back. Thus, claim 1 reads that the fastener is disposed to be positioned at the person's back, which includes positioning the fastener after it has been fastened.

Applicants also note that the ability to position the adjustable fasteners at a person's back has important benefits with respect to the claimed invention. In particular, Applicants have found that a fastener positioned in front can be uncomfortable during strenuous activity. During such activity, the fastener can have a tendency to shift. When a front-positioned fastener shifts, it can end up rubbing uncomfortably across sensitive skin on top of the person's upper chest. However, when the fastener is positioned in back, the fastener rubs, if at all, on less sensitive skin.

Turning to Corrado, that reference discloses a dressing with both flexible band 12 and body engaging strip 58.

Corrado specifically states that the flexible band 12 is “formed primarily of a ... non-elastic fabric or material.” Thus, Applicants submit that Corrado’s flexible band 12 does not read on claim 1’s strap, which “is sufficiently elastic so as to ensure a close fit.” It follows that Corrado’s fastening means 30 for flexible band 12 does not read on the claimed adjustable fastener for the strap. Furthermore, Applicants note that Figure 4 of Corrado clearly shows that fastening means 30 are not positioned to be fastened in back of a person wearing Corrado’s dressing.

Corrado does teach that body engaging strip 58 “includes a flexible strip formed primarily of an elastic fabric or material.” See Corrado, col. 6, lines 23 to 24. However, Corrado specifically teaches that “[t]he *back engaging portion* 90 [of its body engaging strip 58] is longitudinal and continuous *without fasteners or other coupling devices*.” See Corrado, col. 6, lines 27 to 28 (emphasis added). Applicants’ position is confirmed by Figure 4 of Corrado, which clearly shows that fastening elements 78, 80, 84 and 84 for Corrado’s body engaging strip 58 are not positioned to be fastened in back of a person wearing Corrado’s dressing.

The positioning of the fastening means and elements in Corrado does not appear to Applicants to be a trivial feature. Rather, this arrangement appears to Applicants to help Corrado satisfy one of its main purposes, namely enabling “the back portion of the dressing [to] be slipped under [a] patient without disrupting anesthetic apparatuses or any intravenous needles.” See Corrado, col. 2, lines 46 to 49.

In view of the foregoing, Applicants submit that Corrado cannot fairly be interpreted as either disclosing or suggesting amended claim 1's feature of "an adjustable fastener ... that can be positioned at the person's back."

Furthermore, Applicants submit that modifying Corrado to have the fastener in back would interfere with Corrado's stated purpose of enabling "the back portion of the dressing [to] be slipped under [a] patient without disrupting anesthetic apparatuses or any intravenous needles." Accordingly, Applicants submit that Corrado cannot fairly be modified to read on the features recited by amended claim 1.

For at least the foregoing reasons, claim 1 and the claims that depend therefrom are believed to be allowable over the applied art. Such action is respectfully requested.

Claim 10: Amended claim 10 is reproduced below for the Examiner's convenience:

10. A method that reduces breast movement while a person exercises or performs some other activity, comprising:
fitting a strap across tops of the person's breasts, under the person's arms, and around the person's back;
fastening the strap together with an adjustable fastener; and
positioning the adjustable fastener at the person's back;
wherein at least part of the strap is sufficiently elastic so as to ensure a close fit, but is also sufficiently inelastic so that the restraint avoids contributing to movement of the breasts during exercising or other activities.

The applied art, namely Corrado, is not seen by Applicants to disclose or to suggest the foregoing features of claim 10, at least with respect to "positioning the adjustable fastener at the person's back." As discussed above, neither Corrado's fastening means 30 nor

Corrado's fastening elements 78, 80, 84 and 86 appear to Applicants to be fastened in back of a person wearing Corrado's dressing. Thus, Applicants submit that Corrado cannot fairly be interpreted as either disclosing or suggesting amended claim 10's feature of "positioning the adjustable fastener at the person's back." Applicants likewise submit that Corrado cannot fairly be modified to read on this feature of claim 10. Accordingly, amended claim 10 and the claims that depend therefrom are believed to be allowable over the applied art. Such action is respectfully requested.

New Claims

Claims 19 and 21 are the independent ones of new claims 19 to 22. New claim 19 is reproduced below for the Examiner's convenience:

19. A restraint that reduces breast movement while a person exercises or performs some other activity, consisting essentially of:
a single strap that fits across tops of the person's breasts, under the person's arms, and around the person's back; and
an adjustable fastener that is for fastening the strap together;
wherein at least part of the strap is sufficiently elastic so as to ensure a close fit, but is also sufficiently inelastic so that the restraint avoids contributing to movement of the breasts during exercising or other activities.

This claim uses the transitional phrase "consisting essentially of." This transitional phrase is discussed at MPEP § 2111.03, the relevant portion of which is reproduced below (citations omitted):

The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. ...

“A ‘consisting essentially of’ claim occupies a middle ground between closed claims that are written in a ‘consisting of’ format and fully open claims that are drafted in a ‘comprising’ format.” ... For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, “consisting essentially of” will be construed as equivalent to “comprising.” ... If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of “consisting essentially of,” applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention

Applicants have used the transitional phrase “consisting essentially of” as opposed to simply “consisting of” so as to encompass addition or inclusion of non-functional and/or inherent components in the scope of claim 19. For example, the claim is meant to encompass variations that include non-functional labels and tags (e.g., a manufacturer's or distributor's brand tag), as well as inherent elements such as stitching or adhesive used to connect the fastener to the strap, to prevent fraying at the ends of the strap, etc.

Applicants submit that claim 19 includes a clear indication of the basic and novel characteristics of the embodiment recited by that claim, namely a *single* strap and adjustable fastener arranged as recited by the claim. This single strap is believed to be novel and inventive in that Applicants are unaware of anything in the prior art that shows that such a single fastened strap would even stay in place on its own, let alone function to reduce breast movement while a person exercises or performs some other activity as recited by claim 19.

The “single strap” embodiment recited by claim 19 precludes incorporation of the restraint into a bra or the like. However, this limitation is not intended to preclude use of the restraint with a separate unattached bra or the like, as indicated by dependent claim 20.

Furthermore, nothing in claims 19 and 20 and in this discussion of those claims is intended to affect the scopes of claims 1 to 18 in any way whatsoever.

Important characteristics of the single strap embodiment recited by claim 19 include simplicity of construction, manufacture, and use, and ease of adjustability. Addition of other components such as other straps would significantly and adversely change these characteristics.

Applicants submit that the “single strap” element of claim 19, in combination with the transitional phrase “consisting essentially of,” clearly distinguishes the subject matter of that claim from Corrado’s combination of flexible band 12 and body engaging strip 58. Accordingly, claim 19 and its dependent claim 20 are believed to be allowable over the applied art. Such an indication is respectfully requested.

New claim 21 is a method claim corresponding to claim 19 and is reproduced below for the Examiner’s convenience:

21. A method that reduces breast movement while a person exercises or performs some other activity, consisting essentially of:
fitting a single strap across tops of the person's breasts, under the person's arms, and around the person's back; and
fastening the strap together with an adjustable fastener;
wherein at least part of the strap is sufficiently elastic so as to ensure a close fit, but is also sufficiently inelastic so that the restraint avoids contributing to movement of the breasts during exercising or other activities.

This claim also uses the transitional phrase “consisting essentially of” and recites use of a “single strap.” Again, Applicants have used the transitional phrase “consisting essentially of” as opposed to simply “consisting of” so as to encompass addition or inclusion of

non-functional and/or inherent components in the scope of claim 21. Use of the “single strap” embodiment recited by claim 21 precludes use of a strap incorporated into a bar or the like. However, this limitation is not intended to preclude use of the restraint with a separate unattached bra or the like, as indicated by dependent claim 22. Furthermore, nothing in claims 21 and 22 and in this discussion of those claims is intended to affect the scopes of claims 1 to 18 in any way whatsoever.

Applicants submit that use of a “single strap” in claim 21, in combination with the transitional phrase “consisting essentially of,” clearly distinguishes the subject matter of that claim from Corrado’s use of a combination of flexible band 12 and body engaging strip 58. Accordingly, claim 21 and its dependent claim 22 are believed to be allowable over the applied art. Such an indication is respectfully requested.

Closing

In view of the foregoing amendments and remarks, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner’s earliest convenience.

Applicants' undersigned attorney, who is also one of Applicants, can be reached at (614) 486-3585. All correspondence should continue to be directed to the address indicated below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dane C. Butzer". The signature is fluid and cursive, with the first name "Dane" being the most prominent.

Dane C. Butzer
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Dated: April 30, 2003

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